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DAFFER MCDANIEL LLP
P.O. BOX 684908
AUSTIN, TX 78768

EXAMINER
BONSHOCK, DENNIS G

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte SCOTT J. BROUSSARD

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Appeal 2008-0463
Application 09/870,624
Technology Center 2100

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Decided: March 31, 2008

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Before JAMES D. THOMAS, JOSEPH L. DIXON, and
LANCE LEONARD BARRY, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the

Examiner's final rejection claims 1-20. We have jurisdiction under

35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

BACKGROUND

Appellant's invention relates to a system and method for reducing memory use associated with the graphical representation of a list control. The present invention remedies select situations in the Swing interface which remedies situations in the Abstract Windowing Toolkit of Java. Appellant's claimed subject matter includes a display system (reference number 10) having a display (reference number 16), a graphical user interface (GUI), and a processor (reference number 12). (Spec. p. 11, ll. 28-30; FIG. 1). The processor is coupled between the display and the graphical user interface and is adapted to operate from a windows-based operating system (OS) for executing a software component (API) during runtime of an application program (APP). (Spec. p. 12, ll. 1-3; FIGS. 1 and 2). The executed software component (reference numerals 72 and 74) generates a first image upon the display independent of code within the operating system during a first time and, during a second time, emulates code that, when executed by the processor, generates a second image upon the display dependent on code within the operating system. (Spec. p. 12, ll. 6-10; p. 27, l. 16 to p. 28, l. 16; FIG. 9). The generated first and second images are substantially identical. (Spec. p. 13, ll. 7-8). (Corrected Supplemental Br. 2; Summary of the Claimed Invention). An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below:

1.   A display system, comprising:

a display;

a graphical user interface;

a processor coupled between the display and the graphical user interface and adapted to operate from a windows-based operating system for executing a software component during runtime of an application program wherein the executed software component generates a first image upon time display independent of code within the operating system during a first time and, during a second time, emulates code that, when executed by the processor, generates a second image upon the display dependent on code within the operating system, and wherein the first and second images are substantially identical.

PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Nason   US 6,727,918 B1   Apr. 27, 2004

Fowler, Mixing heavy and light components, 2/98, Vol. 3, No 4, all.

REJECTIONS

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nason in view of Fowler.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and Appellant regarding the above-noted rejection, we make reference to the Examiner's Answer (mailed March 7, 2006) for the reasoning in support of the rejections, and to Appellant's Brief (filed April 20, 2006) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to Appellant's Specification and claims, to the applied prior art references, and to the respective positions articulated by Appellant and the Examiner. As a consequence of our review, we make the determinations that follow.

35 U.S.C. § 103

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). "[T]he Examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability." *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore, "'there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness' . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR Int'l Co. v. Teleflex Inc.*, 127

S. Ct. 1727, 1741 (2007)(quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

At the outset, we note that the scope of independent claims 1, 10, and 18 vary with their characterization of the first interface and the second interface with respect to which is dependent and independent upon the operating system. Furthermore, independent claims 1 and 10 recite different times that code is executed and that second code when executed by the processor emulates behavior of the other of the two interfaces while independent claim 18 does not recite the limitation relating code, but alternatively recites that the second image is adapted to overwrite the first image upon a display screen during a second time.

With respect to independent claim 1, we note that independent claim 1 which recites:

> executing a software component during runtime of an application program wherein the executed software component generates a first image upon the display independent of code within the operating system during a first time and, during a second time, emulates code that, when executed by the processor, generates a second image upon the display dependent on code within the operating system, and wherein the first and second images are substantially identical.

We agree with the Examiner's rejection of independent claim 1 wherein the Examiner relies upon the teachings of Nason to teach and fairly suggest the use of two separate GUIs. Additionally, we find that while the

images from the GUIs may be on the screen at the same time and coexist, these images are not necessarily generated on the display simultaneously. Therefore, we find that it would have been obvious to one of ordinary skill in the art at the time of the invention that first and second images from the GUIs are generated sequentially or at dissimilar times. (Ans. 3-4 and 10-13). Therefore, we do not find Appellant's arguments with respect to the similar time or coexisting images to be persuasive. (Br. 5-7). Additionally, Appellant argues that the system of Nason displays substantially different images at the same time. Here, we do not find the argument to different images or the placement of an image on the GUI to be persuasive since we do not find any express limitations as to the image or its layout in the language of independent claim 1. We find the language of independent claim 1 to be broad enough to merely include a singular image that is similar yet in a different physical location on the screen and Nason teaches and fairly suggests parallel GUIs from operating system dependent and operating system independent code. We find that Nason teaches the use of two images that may be substantially similar from dependent operating system code and independent operating system code.

Appellant argues that Nason cannot be modified to include the limitations of independent claim 1, since Nason fails to even suggest the desirability of doing so. (Br. 7). Appellant argues that there are three examples where Nason fails to suggest the desirability for the three scenarios. (Br. 7). We do not find the argued scenarios persuasive wherein the first and second scenarios are directed to specific images not recited in

independent claim 1. Therefore, these arguments are not persuasive. With respect to the third scenario, we have addressed it above, and we do not find it persuasive of error.

Appellant argues that the Examiner's conclusion that lightweight and heavyweight components looks substantially identical cannot be surmised from the teachings actually provided by Fowler. (Br. 8-9). We disagree with Appellant since we do not find any express limitations in the language of independent claim 1 which would limit the claimed invention to the specific situations discussed in Fowler where problems between lightweight and heavyweight components may exist. While we do agree that Fowler identifies situations of concern and provides warnings with respect to those problems, we agree with the Examiner that there are situations where an image generated by a heavyweight component would be strikingly similar to an image generated by a lightweight component. Therefore, we agree with the Examiner's combination of Nason and Fowler. While there are recognized circumstances or situations where they may not be similar due to the limitations of each component, we find no express limitations in the language of independent claim 1. Therefore, Appellant's argument is not persuasive.

With respect to Appellant's arguments concerning mixing lightweight and heavyweight components and that Fowler teaches away from mixing the two types of components, we disagree with Appellant's sweeping conclusion. (Br. 10). Rather, we find that Fowler suggests to be careful in

the use of the two types of components together. Therefore, we do not find Appellant's argument persuasive.

With respect to Appellant's argument concerning the Examiner's additional reliance upon the teachings of Nason regarding displaying the same or similar image with a first and second application program interface (Br. 10-11), we find no express limitation as to the extent or type of the images, as discussed above. Therefore, we do not find Appellant's argument persuasive of error in the Examiner's initial showing, and we will sustain the rejection of independent claim 1 and its dependent claims 2-9.

With respect to independent claim 10, the Examiner essentially repeats the rejection set forth with respect to independent claim 1 in the statement of the rejection. In response to Appellant's argument concerning the specific steps recited in independent claim 10, the Examiner maintains that the determination by the controller in Nason determines where to send the command for display. (Ans. 20). The Examiner maintains that when using two different APIs, the original interface will be replaced as the destination interface by a different interface for processing for the display. The Examiner maintains that the second image that is to be "re-displayed" is nothing more than another image that can be displayed in conjunction with the first image, but that it was generated using a different API. (Ans. 20-21). We disagree with the Examiner's interpretation of the selection of either interface for the display as teaching or suggesting replacing the interface and re-running the application program and re-display of a second image. We cannot agree with the Examiner's reliance upon the second application

program interface as meeting the specific sequence of steps as recited in independent claim 10. Therefore, we do not find that the Examiner has set forth the requisite initial showing of obviousness of independent claim 10 nor has the Examiner set forth a convincing line of reasoning based upon the teachings of Nason and Fowler to show obviousness of independent claim 10. Therefore, we cannot sustain the rejection of independent claim 10 and its respective dependent claims 11-17.

With respect to independent claim 18, Appellant argues that Nason fails to disclose that during a second time, the second image which is operating system independent, is adapted to overwrite the first image, which is operating system dependent, upon a display screen. While Appellant acknowledges that Nason does teach one image overwriting another when a secondary image overlaps or overwrites a portion of the desktop, Nason does not recognize, teach or fairly suggest that the native and secondary GUIs could produce substantially identical images. (Br. 16-17). We agree with Appellant that the teachings of Nason are very general and not specific to certain implementations for various identical images. With that said, we agree with the Examiner that Nason does teach overlapping or overwriting a portion of a desktop which would be an image as recited in independent claim 18. Furthermore, the teachings of Fowler do teach and suggest the use of both heavyweight and lightweight components and some of the respective limitations thereto. Yet, we find no express limitations in the language of independent claim 18 which would limit the claimed invention beyond the combination as taught and fairly suggested by Nason and Fowler.

Therefore, we do not find Appellant's argument to be persuasive of error in the Examiner's initial showing.

Appellant argues that Fowler fails to teach that an operating system independent image could be used to overwrite an operating system-dependent image upon a display screen. (Br. 18). We disagree with Appellant since the teachings of Fowler concern the z-order of the two components with respect to labels. Here, the claim language does not recite "labels," but rather merely images. Therefore, we do not find Appellant's argument persuasive of error in the Examiner's initial showing, and we will sustain the rejection of independent claim 18 and its respective dependent claims 19 and 20.

CONCLUSION

To summarize, we have sustained the rejection of claims 1-9 and 18-20 under 35 U.S.C. § 103(a), and we have reversed the rejection of claims 10-17 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

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DAFFER MCDANIEL LLP
P.O. BOX 684908
AUSTIN, TX 78768